

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

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In the Matter of)
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 MOBEX COMMUNICATIONS, INC.) RM-_____
)
 Petition for Rulemaking to Modify)
 Sections 80.123 and 80.475 of the)
 Commission's Rules)

JUN 13 2003

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

To: The Commission

PETITION FOR RULEMAKING

Mobex Network Services, LLC ("Mobex"), pursuant to Section 1.401 of the Commission's Rules, 47 C.F.R. §1.401, hereby petitions the Commission to modify Sections 80.123 and 80.475(c) to assure Automated Maritime Telecommunications Service ("AMTS") licensees flexibility in the provision of communications services to the public.¹ In support of its petition, Mobex shows the following.

Mobex is the largest operator of AMTS systems. Mobex and its predecessors have been providing AMTS service to the public since the inception of the service, a period of more than 20 years. Many changes have occurred in the wireless telecommunications business, the Communications Act, and the Commission's regulatory outlook over that time. It is time either to amend Rule Sections 80.123 and 80.475(c) or to harmonize the Commission's

¹ Although Mobex is presenting its filing as a Petition for Rule Making, the Commission may desire to treat the instant filing as a request for declaratory ruling pursuant to Section 1.2 of the Commission's Rules, 47 C.F.R. §1.2

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interpretation of those rules with changes in the wireless business and with directly related changes in regulation.

Rule Section 80.475(c) currently provides in relevant part that

in lieu of public correspondence service and AMTS system may provide private coast station communications related to the operational needs of ships including transmissions of fuel, weather, position and supply reports. However, such communications may be provided only to ship stations whose licensees make cooperative arrangements with the AMTS coast station licensees,

47 C.F.R. §80.475(c).

Rule Section 80.123 currently provides that

marine VHF public coast stations, including AMTS coast stations, may provide public correspondence service to stations on land in accordance with the following:

- (a) The public coast station licensee must provide each associated land station with a letter, which shall be presented to authorized FCC representatives upon request, acknowledging that the land station may operate under the authority of the associated public coast station's license;
- (b) Each public coast station serving stations on land must afford priority to marine-originating communications through any appropriate electrical or mechanical means.
- (c) Land station identification shall consist of the associated public coast station's call sign, followed by a unique numeric or alphabetic unit identifier;
- (d) Radio equipment used on land must be type accepted for use under part 22, part 80, or part 90 of this chapter. Such equipment must operate only on the public correspondence channels authorized for use by the associated public coast station;
- (e) Transmitter power shall be in accordance with the limits set in Sec. 80.215 for ship stations and antenna height shall be limited to 6.1 meters (20 feet) above ground level;
- (f) Land stations may only communicate with public coast stations and must remain within radio range of associated public coast stations; and,

(g) The land station must cease operation immediately upon written notice by the Commission to the associated public coast station that the land station is causing harmful interference to marine communications, 47 C.F.R. §80.123.

The Commission has adopted rules and policies to encourage a broad array of radio services within the AMTS frequency band, consistent with its overall policy to promote flexibility, competition and more efficient spectrum utilization.² The Commission has concluded that “giving licensees more flexibility in the use of maritime spectrum, while preserving the core purpose of this internationally allocated radio service, *i.e.*, to promote safety of life and property at sea, serves the public interest.”³ In proposing various rule changes to achieve that goal, the Commission indicated that it was guided by several broad policy initiatives:

First, we seek to establish a flexible regulatory framework that will (1) provide opportunities for continued development of competitive new services using maritime spectrum, (2) expedite market entry through streamlined licensing procedures, (3) promote technological innovation, and (4) eliminate unnecessary regulatory burdens. Second, we seek to enhance regulatory symmetry among maritime CMRS providers and between maritime CMRS providers and other CMRS providers to ensure that market forces, rather than regulatory forces, shape the development of the CMRS marketplace.⁴

² *E.g.*, the recent Spectrum Policy Task Force recommended that “the Commission evolve its spectrum policy toward more flexible and market-oriented spectrum policies...[and] the maximum feasible flexibility of spectrum use.” ET Docket No. 02-135, *November 2002 Report* at 1 (released November 15, 2002).

³ *Fourth Report & Order and Third Notice of Proposed Rulemaking in PR Docket 92-257*, 15 FCC Rcd 22585, 22587 (2000) (“*Fourth R&O and Third NPRM*”).

⁴ *Id.* at 22588.

AMTS licensees have proceeded under this flexible use policy to provide a variety of services to their customers. In addition to “automated, integrated and interconnected, maritime communications,”⁵ AMTS licensees also offer land-based services such as mobile data, automatic vehicle location (AVL) systems, supervisory control and data acquisition (SCADA) systems, and “one-to-many” private dispatch. The Commission has also adopted rules to issue additional AMTS licenses nationwide on a geographic area basis, with a clear expectation that the services offered would include land-based operations unrelated to the maritime industry.⁶ However, except in very limited circumstances, current Commission rules require that AMTS systems provide such land-based services the technical capability to interconnect to the public switched telephone network (PSTN), even if such end-users of the AMTS system neither require nor desire interconnection. That requirement is a remnant of a more restrictive regulatory policy, and should be modified to reflect the Commission’s current, flexible spectrum policy.

When the AMTS frequency band was allocated in 1981, Report and Order in Gen Docket No. 80-1, 84 F.C.C.2d 875 (1981) (the 1981 R&O), certain words had different meanings from their meanings today. Those differences need to be resolved to provide

⁵ 47 C.F.R. §80.5.

⁶ *Second Memorandum Opinion and Order and Fifth Report and Order in PR Docket No. 92-257*, 17 FCC Rcd 6686, 6702-03 (2002) (“*Second MO&O and Fifth R&O*”)(“We conclude that the public interest will be served by allowing AMTS geographic area licensees to place stations anywhere within their service areas to serve vessels or units on land....”).

regulatory parity among Commercial Mobile Radio Service operators and to provide additional competitive service to the public.

In 1981, when the forerunner of Rule Section 80.475(c) was adopted, there were two categories of VHF coast station, Public Coast and Limited Coast.⁷ A Private Coast station was, and still is, authorized to provide the same type of service which is authorized today to a person who represents that it will use the station for “private, internal communications”, FCC Form 601, Main Form, Item 36. A Private Coast station was authorized to provide only correspondence related to the needs of ships, and that restriction survives at Rule Section 80.507(a). A Private Coast operator may make cooperative shared use arrangements with other eligible persons, pursuant to Rule Section 80.503, but “may not charge fees for the provision of communications services,” Second Report and Order and Second Further Notice of Proposed Rulemaking in PR Docket No. 92-257, 12 FCC Rcd 16949, 16954 (1997).

The 1981 R&O codified the “may charge versus may not charge fees” distinction between public and private AMTS (IWCS) systems at Rule Section 81.913(c), which provided that

an applicant desiring to provide a limited [a private] correspondence service may seek authorization to operate an IWCS system to provide only operational communications (communications relating to the safe efficient and economical operation of vessels, such as fuel, weather, position reports, essential supplies and service, and the like).

⁷ The name “Limited Coast” was changed to Private Coast in the Commission’s Report and Order in PR Docket No. 85-145, 60 RR 2d 1550 (1986) and the name “Private Coast” will be used henceforth.

However, service shall be provided to any ship station licensee who makes cooperative arrangements for the operation of the stations which are to provide IWCS service.

Rule Section 81.913(c) was obviously intended to prevent a person from obtaining a license for a private AMTS system, but operating as a pseudo-common carrier without subjecting itself to common carrier regulation. The substance of former Rule Section 81.913(c) is now found at Rule Section 80.475(c), however, the meaning of “private” has shifted since 1986 when Rule Section 80.475(c) was adopted and confusion appears to have resulted.

To draw bright lines between common carrier and non-common carrier, the Telecommunications Act of 1996 defined “commercial mobile service” and “private mobile service” at 47 U.S.C. §332(d). The Commission prohibits a person who obtains a license for a Private Coast station from charging fees for services, just as it prohibits a person from charging fees who obtains a land mobile station license on the basis of a Form 601 application representation that it will use the station for private, internal communications. The Commission does not, however, prohibit any Commercial Mobile Radio Service operator -- other than AMTS and site-specific VHF Public Coast operators -- from providing both interconnected and non-interconnected service. Witness the widely advertised Direct Connect® non-interconnected service provided to millions of users by CMRS operator Nextel Communications, Inc.

When the Commission adopted former Rule Section 81.913(c), it did not intend to prohibit a public AMTS operator from also providing non-interconnected correspondence.

Rather, its intent was to prohibit a private AMTS operator from providing pseudo-common carrier service while evading regulation as a common carrier. To remove a cloud of doubt about the range of services which may be provided by a public (in today's terminology, a CMRS) AMTS operator, the Commission should either amend Rule Sections 80.475(c) and 80.123 or clarify that they do not prohibit an AMTS operator which has the regulatory status of CMRS from also providing non-interconnected service to any member of the public for uses of the customer's choosing.

There is no public policy reason for the Commission to prevent AMTS licensees from providing land-based, non-interconnected service. Interconnection remains an integral part of the traditional maritime operations of AMTS, which continue to provide a reliable means for ships to communicate both internally and to the public through the PSTN. However, that rationale for requiring PSTN interconnection for *maritime* operations does not extend to *land-based* AMTS operations. AMTS licensees should have broad discretion as to the nature of land-based operations. The Commission should encourage a broad range of services, including non-interconnected land-based operations, to maximize AMTS spectrum efficiency, so long as such operations do not interfere with core maritime operations.

Therefore, Mobex recommends the following modifications to Part 80 of the Commission's rules:

Amend Section 80.123 to read as follows:

80.123 Service to stations on land.

Marine VHF public coast stations, including AMTS stations, may provide public correspondence and private communication service to stations on land in accordance with the following

Amend Section 80.475(c) to read as follows:

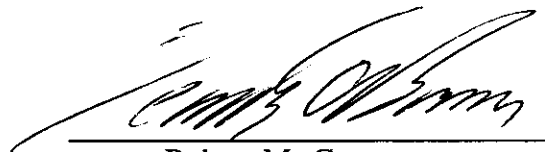
(c) In addition to public correspondence service a public AMTS system may provide private communications service to units on land, subject to Section 80.123. Both private and public AMTS systems may provide private communications related to the operational requirements of ships including transmissions of fuel, weather, position and supply reports. A private AMTS station may provide communications only to persons who make cooperative non-profit arrangements with the private AMTS coast station licensee.

These minor rule changes will permit AMTS licensees to provide land-based, private radio communications unrelated to the operations of ships, without forcing the customer to take unneeded interconnected service. The proposed changes are consistent with Commission policy to promote flexible use of the radio spectrum, and of the AMTS radio spectrum in particular. The Commission should move forward as quickly as possible to initiate a notice of proposed rulemaking and implement the recommended rule changes. Until that occurs, AMTS licensees will be subject to unnecessary regulation of their spectrum use, and potential bidders in the AMTS spectrum auction will be uncertain regarding the permitted use and value of that spectrum.

Conclusion

Therefore, for the reasons set forth above, the Commission should move forward as quickly as possible to initiate a notice of proposed rulemaking to implement these modifications to existing rules or to clarify the existing rules consistent with the explanation herein.

Respectfully submitted,
MOBEX NETWORK SERVICES, LLC

A handwritten signature in black ink, appearing to read "Robert M. Gurss", is written over a horizontal line.

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